IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Smt.Neetu Choudhary v. State of Rajasthan & Ors.

S.B.CIVIL WRIT PETITION NO.5062/2004
under Articles 226 of the Constitution of India.

Date of Order : 19th April, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. G.R.Punia]
Mr. Yashpal Khileree] for the petitioner.
Mr. Rameshwar Dave, Dy.Govt.Advocate.

BY THE COURT :

Sanction was granted by Government of Rajasthan to fill in 568 posts of Nurse Gr.II by making appointments on urgent temporary basis. The aforesaid sanction was granted after getting approval from the department of finance under an order dated 20.1.2000. The sanction of the Government was notified by the Director (Aids), Directorate of Medical and Health Services, Government of Rajasthan, Jaipur under an office order dated 21.1.2000.

By an order dated 25.1.2000, passed by Joint Director, Medical and Health Services, Jodhpur Zone, Jodhpur, appointment was given to the petitioner as

Nurse Gr.II on urgent temporary basis against the posts notified by order dated 21.1.2000. The appointment of the petitioner was made for a period of six months at the consolidated salary of Rs.4500/- per month. The term of appointment of the petitioner and other similarly situated persons was extended till further orders or till regular recruitment takes place, whichever is earlier, by an order dated 2.4.2002.

The petitioner remained on maternity leave from the month of December, 2001 to March, 2002 and on 21.1.2002 she gave birth to a baby. The petitioner also applied for maternity leave for a period of four months commencing from 2.5.2004. The maternity leave was denied to the petitioner by Superintendent, Associated Group of Hospitals under a communication dated 17.3.2004 on the count that in view of the order dated 31.10.2001 passed by the Dy.Secretary to the Government of Rajasthan, Department of Medical and Health Services, the persons employed on consolidated salary (contract basis) are not entitled for casual leave, day off, maternity leave etc.

By this writ petition a challenge is given by the petitioner to the denial for maternity leave by communication dated 17.5.2004 passed in pursuance of the office order dated 30.10.2001.

I have heard counsel for the parties.

The contention of the counsel for the petitioner is that the appointment of the petitioner was made on urgent temporary basis under the Rajasthan Medical and Health Subordinate Service Rules, 1965 (hereinafter referred to as “the Rules of 1965”). A temporary employee appointed under the Rules of 1965 is entitled for maternity leave in view of the provisions of Rule 103 of the Rajasthan Service Rules, 1951 (hereinafter referred to as “the Rules of 1951”).

A reply to the writ petition has been filed on behalf of the respondents wherein the respondents admitted that the appointment to the petitioner was given on urgent temporary basis under Rule 27 of the Rules of 1965, as such it is a case admitted that the petitioner is working in temporary capacity. The sole contention of the counsel for the respondents is that though the appointment of the petitioner is in temporary capacity but she is working at consolidated salary of Rs.4500/-, therefore, she is not entitled for maternity leave under Rule 103 of the Rules of 1951.

Rule 27 of the Rules of 1965 empowers the Government or the authority competent to make appointments to the posts under the Rules of 1965 on

urgent temporary basis. The petitioner was admittedly appointed under Rule 27 of the Rules of 1965. Rule 103 of the Rules of 1951 pertains to maternity leave which reads as under:-

> "103.Maternity leave.-A competent authority may grant "Maternity Leave" to a female Government Servant thrice during the entire period of her service. However, if there is no surviving child even after availing of it thrice, Maternity Leave may be granted on one more occasion.
>
> The maternity leave may be allowed on full pay for a period which may extend upto the period of 90 days from the date of its commencement.
>
> NOTE
>
> Maternity leave under this rule may also be granted in cases of Miscarriage, including abortion, subject to the conditions that:-
>
> (i)the leave does not exceed six weeks, and
> (ii)the application for the leave is supported by a certificate from the Authorised Medical attendant.
>
> Government of Rajasthan's Decision
>
> 1.Maternity leave is also admissible to temporary female Government servants under this Rule.

2.Maternity leave is not admissible in case of incomplete abortion.

"Clarification"

'Abortion' does not include 'threatened abortion' and maternity leave cannot be granted in the case of threatened abortion."

The Government of Rajasthan under its order No.F.12(1)F.II/54 dated 25.2.1955 declared the temporary female Government servants entitled for maternity leave. In view of this decision of the Government of Rajasthan the petitioner being a temporary female Government servant is entitled for the maternity leave under Rule 103 of the Rules of 1951. Such benefits cannot be denied to the petitioner merely on the count of the mode of payment of wages. The petitioner is working with respondents on urgent temporary basis and her status remains unchanged irrespective of the mode of payment of salary. In view of provisions of Rule 103 of the Rules of 1951 and decision of Government of Rajasthan dated 25.2.1955 the petitioner is entitled for maternity leave. The order dated 30.10.2001 cannot be made applicable upon the petitioner as she is working in temporary capacity though getting consolidated wages.

For the reasons mentioned above the writ petition is allowed and the respondents are directed to

sanction maternity leave to the petitioner as applied by her and all benefits consequential thereto be given to her within a period of two months from the date a certified copy of this order is placed before the competent authority by the petitioner.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.